Criminal Appeal No.173-DB of 1998

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

...

Date of Decision November 17 ,2007.

Tehal Singh **...**Appellant

VERSUS

State of Punjab **...**Respondent

1. Whether the Reporters of Local Newspapers may be allowed to see the judgment ?

2. To be referred to the Reporters or not ?

3. Whether the judgment should be reported in the Digest ?

CORAM :

HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

Present: Mr. Vinod Ghai, Advocate,
for the appellant.

Mr. V.K. Jindal, Additional Advocate General, Punjab.

-.-

MOHINDER PAL, J.

The appellant was tried by the learned Sessions Judge, Faridkot, for the offences punishable under Sections 302 and 307 of the Indian Penal Code (hereinafter referred to as `the Act') and Section 27 of the Arms Act. Vide judgment dated

April 01,1998, he was convicted by the Sessions Judge, Faridkot, for the said offences. As per sentence order of the same date, he was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.1,000/- and in default of payment of fine to undergo further rigorous imprisonment for for three months under Section 302 of the Code. Under Section 307 of the Code, sentence of rigorous imprisonment for five years and fine of Rs.500/- and in default of payment of fine he was ordered to undergo further rigorous imprisonment for two months was awarded. Under Section 27 of the Arms Act, he was awarded rigorous imprisonment for three years and to pay fine of Rs.300/- and in default thereof to undergo further rigorous imprisonment for one month. All the substantive sentences of imprisonment were ordered to run concurrently. Aggrieved against his conviction and sentence, this appeal has been preferred by appellant Tehal Singh.

2. Facts of the prosecution case are that on February 25, 1996, Assistant Sub Inspector Baldev Singh along with Head Constable Iqbal Singh, Constable Angrej Singh, Constable Gurmit Singh and other police officials was laying a picket post on Defence Road, Village Balauch Kera. There Dial Singh son of Wassan Singh resident of Village Balauch Kera got recorded his statement to Assistant Sub Inspector Baldev Singh stating that on February 25, 1996 at about 9 P.M, he along with Chanan Singh son of Mula Singh were coming through the village. When they

were going through the street of Rukkan Pir Wala and reached near the house of Tehal Singh (appellant), where an electric bulb was emitting light, Kulwant Singh, who was driving Enfield Motor Cycle and Nachhattar Singh alias Satta (nephew of Dial Singh-complainant) and Dalbir Singh were sitting on the pillion, crossed them. At that time, Tehal Singh (appellant) was standing at the door of his house with his double-barrell gun. He raised a `Lalkara' that he would teach a lesson to them (Kulwant Singh, Nachhattar Singh and Dalbir Singh) for going on a motor-cycle through the street. He fired two shots from his gun towards them. All the three fell down from the motor cycle. Dial Singh (complainant) and Chanan Singh raised hue and cry whereupon Tehal Singh ran away from the spot with his gun. Nachhattar Singh received injuries on his neck and face, Kulwant Singh on his face and back side of shoulders and Dalbir Singh on his right leg. Nachhattar Singh died at the spot. On the basis of the statement of Dial Singh (complainant), the present case was registered.

On February 26, 1996, at 10.50 A.M Dr. Balkar Singh Senior Medical Officer, Civil Hospital, Malout, performed post mortem examination on the dead body of Nachhattar Singh and observed multiple lacerated wounds of various sizes on the right side of upper part of neck and on the right side of face. Multiple lacerated wounds of various sizes with inverted margins were also found over the right supra-scapular region. The doctor

also observed multiple lacerated wounds with inverted margins on the upper part of left side of neck. All the injuries were caused by firearm weapons and were ante mortem in nature. According to the opinion of the Doctor, the death was due to haemorrhage and shock due to injury No.1 which alone or in combination with other injuries was sufficient to cause death in the ordinary course of nature. The probable time between injuries and death was immediate and between death and post mortem was less than 24 hours.

On February 26, 1996, Dr. Kuldip Goel (P.W.4) medico-legally examined injured Kulwant Singh and found one incised wound on his face and multiple lacerated wounds with inverted margins on the back of upper part of left side of chest. According to the opinion of the Doctor, injury on face was caused by sharp-edged weapon and the other injury i.e multiple lacerated wounds with inverted margins, was the result of firearm.

On March 20, 1996, the police made a request vide Exhibit P.J/8 to Dr.Kuldip Goel to ascertain as to whether injury on the face of Kulwant Singh could be caused by falling from motor cycle. Dr.Kuldip Goel opined vide endorsement Exhibit P.J/9 on March 20, 1996, that the said injury could be caused by fall.

On February 26, 1996, , Dr.Kuldip Goel had also medico-legally examined injured Dalbir Singh and found four

punctured lacerated wounds with clotted blood - two on the right thigh, 3 cms apart and 5 cms above the right puplital fossa or back of the right knee, one on the right puplital region and one on posterio-lateral aspect of right leg.

The case was investigated, statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure and after completion of investigation, challan was presented against the accused.

3. On August 28, 1996, the learned Sessions Judge, Faridkot, framed charges against the accused under Sections 302 and 307 of the Code and Section 27 of the Arms Act. He did not plead guilty to the charge and claimed trial.

4. At the trial, the prosecution examined as many as nineteen witnesses i.e P.W.1 Dial Singh (complainant), P.W.2 Dr.Jasjiwan Kaur, P.W.3 Dr. Balkar Singh, P.W.4 Dr.Kuldip Goel, P.W.5 Kulwant Singh (injured), P.W.6 Malkiat Singh, P.W.7 Dalbir Singh (injured), P.W.8 Major Singh, P.W.9 Constable Gurmit Singh, P.W.10 Ram Singh, P.W.11 Constable Iqbal Singh, P.W.12 Constable Angrez Singh, P.W.13 Dr. Rajinder Singh Khurmi, P.W.14 Dr.Inederpal Singh, P.W.15 Angrez Singh, P.W.16 Suresh Kumar, P.W.17 Assistant Sub Inspector Surinder Singh, P.W.18 Assistant Sub Inspector Baldev Singh, Investigating Officer, and P.W.19 Moharrir Head Constable Surinder Singh.

5. Statement of the accused was thereafter recorded under Section 313 of the Code of Criminal Procedure. He denied

the prosecution allegations and pleaded innocence. He further stated that he has been falsely implicated due to enmity with the prosecution witnesses. All the prosecution witnesses are close relatives of the deceased. In the year 1983, Surjan Singh, father of Kulwant Singh was murdered and First Information Report was recorded at the instance of the accused-appellant against Kulwant Singh and his brother Jaswant Singh and both of them were prosecuted. The appellant and Avtar Singh appeared as prosecution witnesses in that case. Dalbir Singh (P.W) is also a close relation of Kulwant Singh (P.W) and the deceased. No empty was found at the spot. He further stated that he was taken into custody by the police along with his gun and licence and detained for some days illegally and his formal arrest was shown later. Recovery of gun was foisted on him. The whole story was concocted by the police. He also stated that there was no motive for him to commit the crime, rather there was motive for the complainant party to falsely implicate him. However, no evidence was produced in defence.

6. We have heard the arguments of Mr. Vinod Ghai, learned counsel for the appellant and Mr. V.K. Jindal, learned Additional Advocate General, Punjab, and have gone through the records of the case.

7. At the outset, it may be mentioned that P.W.1 Dial Singh, who had lodged First Information Report in this case, resiled from his statement and was declared hostile by the

prosecution. The prosecution case, thus, rests on the statements of two eye-witnesses, namely, P.W.5 Kulwant Singh and P.W.7 Dalbir Singh, who also received injuries in the occurrence. Both these eye-witnesses have given identical statements describing the circumstances under which the appellant fired shots at them and Nachhattar Singh (since deceased) from his double barrel gun. According to Kulwant Singh (P.W.5), about one year and fifteen days back (his statement was recorded on March 12, 1997), he along with Dalbir Singh (P.W.7) and Nachhattar Singh (since deceased) was returning from the fields of Dalbir Singh and was going on a motor cycle in the street known as Rukkan Pir Wali Gali. The motor cycle was bearing registration No.PUC-2198 and was being driven by Kulwant Singh. Nachhattar Singh was sitting on the pillion and after him was sitting Dalbir Singh. At about 8.30 or 9 P.M, when they reached near the house of the accused, Dial Singh and Chanan Singh P.Ws were standing there. An electric bulb was emitting light from the electric pole and there was also light of the motor cycle. Tehal Singh (appellant) was having a double barrel gun and he fired two shots aiming at them. Motor cycle fell down. One shot hit on his back. Nachhattar Singh received firearm injuries on his face and neck. He received injury on his face due to fall. Dalbir Singh received fire shot injury on his right leg. Dial Singh and Chanan Singh raised alarm`killed, killed'. Dial Singh is his neighbour and is his uncle from his brotherhood. Chanan Singh is also his uncle from the brotherhood. Dial Singh went to inform the

police. The accused ran away. Nachhattar Singh died at the spot. Chanan Singh stayed with them. His brother Jaswant Singh also came there. Then they were taken to the hospital at Malout and from there they were referred to Medical College at Faridkot, where they were medically examined. This statement of Kulwant Singh (P.W.5) has been fully corroborated by Dalbir Singh (P.W.7).

8. Learned counsel for the appellant argued that the conduct of P.W.5 Kulwant Singh and P.W.7 Dalbir Singh after the occurrence appears to be improbable as the statement of Dalbir Singh under Section 161 of the code of Criminal Procedure was recorded on the third day of the occurrence, while it has been admitted by him that he could walk and even run immediately after the occurrence. It is highly improbable that the injured witnesses kept lying at the place of occurrence for a period of about thirty minutes and none from the village came near them, nor they made any effort to take shelter in the houses in the locality. Learned counsel for the appellant tried to create doubt regarding the use of passage by the motor-cyclists as there was a pucca road leading to the farm of Chanan Singh and instead of using pucca road, Kulwant Singh etc. chose to drive from the street of the village where house of accused Tehal Singh was situated.

9. We do not find any force in the arguments raised by learned counsel for the appellant. As stated above, both P.W.5 Kulwant Singh and P.W.7 Dalbir Singh have given an accurate

account of the occurrence. Nachhattar Singh had died at the spot after receiving gun shot injuries at the hands of the appellant. Both Kulwant Singh and Dalbir Singh also received injuries. Dr.Kuldip Goel (P.W.4), who had medico-legally examined Kulwant Singh on February 26, 1996, had found one incised wound on his face and multiple lacerated wounds with inverted margins on the back of upper part of left side of chest. According to him, injury on face was caused by sharp-edged weapon and the other injury i.e multiple lacerated wounds with inverted margins, was the result of firearm. He stated that the injured was brought in the hospital by his brother Jaswant Singh at 2 A.M. On the same day, Dr.Kuldip Goel had also examined injured Dalbir Singh and found four punctured lacerated wounds with clotted blood on his right thigh and knee. The doctor mentioned that he was also brought to hospital by Jaswant Singh. In the incident, when Nachhattar Singh had succumbed to the injuries immediately at the spot and both the eye-witnesses had received injuries, it cannot be said that if the injured were removed to the hospital a bit late, it would in any way affect the prosecution case. Similarly, the argument of the learned counsel regarding the victims preferred going through the village rather than using the circular pucca road, is of no consequence in view of the emphatic ocular as well as medical evidence discussed above.

10. It was also argued by the learned counsel for the

appellant that there was no motive for the accused to attack Nachhattar Singh, Kulwant Singh and Dalbir Singh. It is well-settled that motive is ***sine qua non*** for success of a case. However, as a contrast to this argument of the learned counsel, it may be mentioned that when examined under Section 313 of the Code of Criminal Procedure, the appellant, besides denying the prosecution allegations and pleading innocence, stated that he has been falsely implicated in this case due to enmity with the prosecution witnesses. He stated that in the year 1983, Surjan Singh, father of Kulwant Singh was murdered and First Information Report was recorded at the instance of the accused-appellant against Kulwant Singh and his brother Jaswant Singh and both of them were prosecuted. The appellant and Avtar Singh appeared as prosecution witnesses in that case. Dalbir Singh (P.W) is also a close relation of Kulwant Singh (P.W) and the deceased. He further asserted that there was no motive for him to commit the crime, rather there was motive for the complainant party to falsely implicate him. Further more, Dial Singh, who got the First Information Report recorded in this case and later on resiled from his statement and had to be declared hostile, in his statement recorded by Assistant Sub Inspector Baldev Singh on February 25, 1996, forming basis for registration of the case, mentioned of his own above the motive for the accused to commit the crime. He stated that cause of grudge is that there was an old enmity. Punjab Singh son of Chanan Singh (father

of P.W Dalbir Singh) is studying at Malout and the son of Tehal Singh (appellant) is also studying there. An altercation took place between them and beatings were given by the son of Chanan Singh to the son of appellant. He further stated that this was the reason that Tehal Singh committed this crime.

11. It was also argued by learned counsel for the appellant that as per the statement of Dr.Kuldip Goel (P.W.4), there was an incised wound on the face of Kulwant Singh, which could only be caused by a sharp-edged weapon. Further that the seat of injury on the person of Dalbir Singh i.e on his right leg was highly improbable as Kulwant Singh and Nachhattar Singh had received injuries on face, neck and chest and that this caused a dent in the prosecution case. As regards the incised wound on the face of Kulwant Singh, it may be stated that as deposed by P.W.4 Dr. Kuldip Goel, the police made a request on March 20, 1996, vide Exhibit P.J/8 to ascertain as to whether injury on the face of Kulwant Singh could be caused by falling from motor cycle. Dr.Kuldip Goel opined vide endorsement Exhibit P.J/9 that the said injury could be caused by fall. Regarding the injury on the leg of Dalbir Singh, Dr.Kuldip Goel stated that after receipt of the X-ray report, he gave his supplementary report wherein he categorically stated that the injury was simple and kind of weapon used was firearm. Thus, the medical evidence fully supports the ocular version given by the eye-witnesses.

12. To conclude, it may be stated that Assistant Sub

Inspector Baldev Singh (P.W.18), who had investigated the case, stated that he had taken into possession gun and its licence from the appellant and had picked up two empty cartridges from the place of occurrence, which further support the prosecution case as narrated by P.W.5 Kulwant Singh and P.W.7 Dalbir Singh. The injured eye witnesses will never allow the actual culprit to go scot free and falsely implicate the appellant. There is no dispute regarding the identity of the accused. As has been stated by the prosecution witnesses, electric bulb was emitting light at the place of occurrence. Moreover, prosecution witnesses and the assailant are known to each other. The prompt lodging of the First Information Report in this case vouchsafes the veracity of the prosecution case. The occurrence took place at about 9 P.M on February 25, 1996 and the statement of Dial Singh, forming basis of the First Information Report, was recorded by Assistant Sub Inspector Baldev Singh at 10.30 P.M. The special report was received by the Ilaqa Magistrate at 10.45 A.M on February 26, 1996. So, the First Information Report was lodged with promptness. There was no time for any fabrication and for twisting of the facts.

In view of the above-discussed evidence, we are of the considered opinion that there is no infirmity in the impugned judgment. The appellant was rightly convicted under Sections 302 and 307 of the Code and Section 27 of the Arms Act. The sentence imposed also commensurates with the offence committed by

the appellant So, no interference is also warranted in the impugned sentence order. The appeal, accordingly, is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

(MOHINDER PAL)
JUDGE

November 17, 2007.
ak